

05-0971
Audit
Signed 11/15/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	05-0971
v.)		
)	Account No.	#####
AUDITING DIVISION OF THE)		
UTAH STATE TAX COMMISSION,)	Tax Type:	Income
)		
Respondent.)	Judge:	Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Manager, Income Tax Auditing
RESPONDENT REPRESENTATIVE 2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on November 9, 2005. The matter had been set for a Status Conference but was converted to an Initial Hearing. Petitioner is appealing an audit deficiency of additional tax and interest assessed for 1999. Additionally, a penalty of \$\$\$\$ had been assessed relating to the tax year at issue.

DISCUSSION

As discussed between the parties the basis for the assessment of additional tax was a deduction claimed by Petitioner on her 1999 Utah Individual Income Tax return as a "Utah Wage Adjustment." Petitioner indicated that this had been an adjustment made by her taxpreparer that she did not understand and her taxpreparer had been unable to explain to her. She had tried to get a hold of her taxpreparer to discuss it but had been unable to do so just prior to the hearing. She indicates that she wanted the mater resolved and if

she owed the tax amount she would pay it, but asked that the penalty be waived.

Respondent indicated that it did not know why the deduction had been claimed on Petitioner's return. There had been several different statutory notices issued for the 1999-year, originally based on IRS audits. Petitioner had worked with the IRS resolving the various items, which resulted in the changes being made to the state taxable income. Eventually all audit items had been resolved except for the last item, the "Utah Wage Adjustment." There appears to be no basis for this adjustment as claimed by Petitioner on her return. Therefore the tax and interest are appropriate.

Respondent's representatives had printed Petitioner's account history and there had been no prior penalties assessed. Additionally, Petitioner explained that when the return was originally filed it was just after the death of her husband. She indicates that she had tried to get the matter resolved and also acknowledged that at one point she may have received a collection notice from BCI but thought it was junk mail so disregarded the notice. However, based on the good account history and unfortunate personal event there is basis for waiver of all penalties assessed relating to Petitioner's 1999 income tax filing.

Interest is assessed when taxes are not paid or underpaid to compensate the state for the time value of money. Interest is generally waived only in the event the Tax Commission, or Tax Commission employee error gave rise to the late payment or underpayment. There is no basis for waiver of interest.

APPLICABLE LAW

The Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause. Utah Code Ann. §59-1-401(10).

DECISION AND ORDER

Based on the foregoing, all penalties assessed relating to tax year 1999 are hereby waived. There were no grounds shown to abate the underlying tax amount and sufficient cause was not been shown to

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justify a waiver of the interest associated with Petitioner's tax. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2005.

Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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